

McKay Dee Hospital (“McKay”) seeks review of Administrative Law Judge Marlowe's dismissal of McKay’s application for payment for medical treatment provided to C. L. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board of the Utah Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

### **BACKGROUND AND ISSUE PRESENTED**

McKay filed an application with the Labor Commission to compel Mountain Tech Sales and its insurance carrier, California Indemnity Insurance Co. (referred to jointly as “Mountain Tech” hereafter), to pay for medical services provided to Carla Lucero. McKay’s application alleged that the medical services in question had been necessary to treat injuries Ms. Lucero suffered while working for Mountain Tech, and that Mountain Tech was therefore liable under the Utah Workers’ Compensation Act for the expense of such medical care.

Mountain Tech responded to McKay’s application with a general denial of liability.

Although both parties had invoked the Commission’s jurisdiction to resolve their dispute, Judge Marlowe dismissed this proceeding *sua sponte* on the grounds the Commission does not have jurisdiction to adjudicate hospitals’ claims for payment for medical services provided to injured workers.

In its motion for review of Judge Marlowe’s decision, McKay argues that Judge Marlowe has erroneously limited the Commission’s jurisdiction over medical fee disputes. Mountain Tech has submitted a response concurring with McKay’s argument.

### **DISCUSSION AND CONCLUSIONS OF LAW**

Judge Marlowe dismissed McKay’s application on the strength of § 34A-2-407(9)(f) of the Utah Workers’ Compensation Act.<sup>1</sup> That provision permits physicians, whose fees are regulated by the Commission, to institute proceedings at the Commission to adjudicate fee disputes. From the foregoing statute’s explicit authorization for adjudication of physicians’ fee disputes, Judge Marlowe drew the implication that the Commission did not have authority to adjudicate hospital fee disputes. However, Judge Marlowe’s conclusion is inconsistent with § 34A-3-109(12)(b) of the Utah Occupational Disease Act:

Except as provided in Subsection (12)(a), Subsection 34A-2-211(7), or Section 34A-2-212, a person may not maintain a cause of action in any forum within this state other than the commission for collection or payment of a physician’s, surgeon’s, or other health provider’s billing for treatment or services that are compensable under

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<sup>1</sup> Although Judge Marlowe cited subsection (8)(f) of § 34A-2-407, recent amendments have renumbered the provisions in question as (9)(f).

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**McKay Dee Hospital**  
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this chapter or Chapter 2, Workers' Compensation Act.

In light of § 34A-3-109(12)(b)'s plain language, the Appeals Board concludes that the Commission does have authority to adjudicate McKay's claim.

**ORDER**

The Appeals Board grants McKay's motion for review, sets aside Judge Marlowe's order of dismissal dated April 11, 2005, and remands this matter to Judge Marlowe for adjudication of the merits of McKay's claim. It is so ordered.

Dated this 20<sup>th</sup> day of January, 2006.

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Colleen S. Colton, Chair

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Patricia S. Drawe

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Joseph E. Hatch